



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	4/21/03	Bill No:	AB 1744
Tax:	Property	Author:	Assembly Revenue and Taxation Committee
Board Position:		Related Bills:	

BILL SUMMARY

This bill would:

- Require the State Board of Equalization (Board) to make and publish an estimate of the fiscal impact resulting from any Board action, including changes to Assessors' Handbooks, Letters to Assessors, or Board-prescribed forms. *Government Code §15606*
- Change the date for a property owner that is eligible for specified exemptions to file an exemption claim on new purchases of property, from prior to the next January 1 to within 90 days after acquisition (or February 15 of the following calendar year, whichever occurs earlier for property acquired in November or December). *§271*
- Related to information about new construction from owner-builders and owner-developers that sold or built the property:
 - Clarify that they are required to provide information related to the new construction to the assessor. *§441*
 - Require that information including the total consideration provided by the purchaser for the property be provided upon written request. *§441*
- Require property owners that lease property to list those items on their property statement when the lease is actually a conditional sales contract (i.e., the lessee can acquire ownership of the property at the end of the lease for a nominal amount). *§442*

Summary of Amendments

Since the previous analysis, this bill was amended to add the provisions related to new construction reporting (§441). The amendments also made special provisions for new acquisitions of property eligible for exemption to require filing by the next February 15, rather than 90 days for November and December acquisitions (§271).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

ANALYSIS**Fiscal Impacts – Board actions**
*Government Code §15606***Current Law**

Government Code Section 15606 requires the Board to:

- Prescribe rules and regulations to govern assessors when assessing¹. §15606(c)
- Prescribe rules and regulations to govern assessment appeals boards when equalizing². §15606(c)
- Prescribe and enforce the use of all forms for the assessment of property for property taxation, including assessment appeal forms.³ §15606(d)
- Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation.⁴ §15606(e)
- Prescribe rules and regulations to govern assessors and assessment appeals boards related to possessory interests⁵. §15606(g)

Proposed Law

The bill would add subdivision (i) to Government Code Section 15606 to require that when the Board acts to perform any of above listed mandated duties the Board make and publish an estimate of the "fiscal impact."

In General

In addition to regulations approved by the Office of Administrative Law, the Board uses the following methods to promote statewide uniformity in property tax assessment matters:

Assessors' Handbooks. The Assessors' Handbook is a series of manuals developed by the staff of the Board in an open process. The objective of the Assessors' Handbook is to give county assessors, their staff, and other interested parties an understanding of the principles of property assessment and real and personal property appraisal for property tax purposes. The Assessors' Handbook is intended to serve as a guide for the appraisal and assessment of real and personal property in California.

¹ Property Tax Rules 1 through 1051, (Title 18 of the California Code of Regulations).

² Property Tax Rules 301 through 326.

³ See Assessors' Handbook 221 "Standard Form List" for a list of forms at <http://www.boe.ca.gov/proptaxes/pdf/ah2221-03.pdf>.

⁴ This is accomplished via the Assessors' Handbook and Letters to Assessors.

⁵ Property Tax Rules 20 through 27; Rule 462.080.

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Letters to Assessors. Letters To Assessors provide an ongoing advisory service for county assessors and other interested parties. The letters present Board staff's interpretation of rules, laws, and court decisions on property tax assessment. They also include summaries of court rulings, legal opinions, highlights of enacted legislation, property tax rules, and technical bulletins for assessment problems.

Forms. Forms used for property tax purposes are annually reviewed and updated as needed to improve or modify as a result of any change in law. Board staff meets with the California Assessors' Association Forms Subcommittee several times during the year to discuss and confer on form changes.

Comments

1. **Sponsor and Purpose.** This bill is sponsored by the California Assessors' Association. The sponsors state that the Board issues rules and interpretations of code that either "cost the counties money to implement or cost the state in lost revenue."
2. **Fiscal Impact.** According to the sponsors of this measure, the phrase "fiscal impact" is intended to include both a revenue estimate and an estimate of the administrative cost for the 58 local county assessors.
3. **The Board already prepares revenue estimates of any proposed regulatory action.** Thus, with respect to the revenue consequences of a regulation, this provision is consistent with the Board's current administrative practice.
4. **The Board's administrative practice is to prepare revenue estimates for any issue decided by the Members of the Board via its Property Tax Committee.** The purpose and objectives of the Property Tax Committee are to promote uniformity and consistency in property tax assessment and administration by providing guidance to assessors and their staff and other practitioners in this field through the Assessors' Handbook, property tax rules (regulations), and other written instructions. Property Tax Committee meetings are open to the public, and participation by county assessors, county counsels, local appeals boards, industry and organization representatives, taxpayers, and other interested parties is encouraged. Generally, before any matter is brought to the Property Tax Committee, one or more Interested Parties meetings on the pending subject matter have been held. Issues that could not be resolved via the Interested Parties meeting are decided by the Members of the Board after hearing testimony from interested parties. The staff prepares a formal "Issue Paper" on each issue when consensus could not be reached in the interested parties meeting process. If the issue has a revenue impact, a revenue estimate is prepared and included in the formal Issue Paper. Information about the Board's Interested Parties Meeting Process may be accessed at <http://www.boe.ca.gov/proptaxes/pdf/PTCmanual2-01.pdf>

Thus, with respect to revenue estimates, it is unclear what additional benefit the amendment of this statute would serve. The Board is aware of the possible revenue

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impact of alternative decisions prior to taking action and this information is shared with interested parties prior to the public meeting. To prepare a revenue estimate on each and every administrative matter, including non-contentious issues or ministerial matters, such as updating forms, would not appear to be a prudent use of Board resources. This bill does not specify any use to which the required fiscal impacts might be subsequently put that would validate the use of such resources – i.e., such as a requirement that the state fund counties for any resulting revenue loss or administrative cost as identified by the Board.

5. **The Board currently posts all of its Issue Papers with associated revenue estimates on its website.** Issue Papers dating back to 1999 are currently posted on the Board's website and may be accessed at <http://www.boe.ca.gov/meetings/meetings.htm#one>.
6. **The phrase "board acts" is not defined.** The proposed language referring to "board acts" is not defined and could be interpreted to include not only acts of the elected Board Members, but various tasks performed by BOE staff. If so interpreted, any new or revised Letters to Assessors, Assessors' Handbooks, Training Materials, and Assessment Practice Survey recommendations, which are designed to promote uniformity throughout the state in the assessment of property for the purposes of taxation could require "fiscal impact" estimates. Furthermore, legal opinions, correspondence and conversations between assessors and their staffs and BOE staff, information presented in training classes and assessor conferences, and similar items that advise and assist assessors and their staffs are also performed for the purpose to promote uniformity throughout the state in the assessment of property for the purposes of taxation and could be interpreted to also require a fiscal impact estimate. If the phrase "board acts" is broadly interpreted then the cost and time to prepare fiscal impact analyses for each of these items could hinder and delay the ability of the BOE to work with assessors and their staff when advice and assistance from BOE staff is sought.
7. **Alternative Approach.** The property tax is locally administered. Generally, the Board does not have direct access to detailed assessment roll information for each county nor does it have access to the county's property records without an on-site inspection. If possible, the Board uses data reported by each county and makes any necessary assumptions to prepare revenue estimates. However, often the data in the Board's possession does not provide a sufficient level of detail for the issue at hand. Consequently, the Board must often depend upon the input and cooperation of county assessors, and/or a sampling of county assessors, to prepare a revenue estimate for Issue Papers and proposed legislation. Because the county assessors are in control of the data at the local level, the better approach would seem to require that the assessor of each county prepare the revenue gain/loss information for their county and estimate their unique administrative costs. The Board could then compile and publish the information as this bill proposes. The county assessors are often the sole governmental agency in control and possession of the information needed to prepare a revenue estimate and only the county assessor

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would have knowledge about their unique processes to prepare an administrative cost estimate.

8. **County Administrative Costs.** While the Board routinely makes revenue estimates for Issue Papers and proposed legislation using the best available data, including individual county assessor's assistance, the Board has never attempted to quantify a county's administrative costs for proposed legislation, regulations, or any other matter. To our knowledge other state agencies and the Legislature similarly do not attempt to quantify a particular county's costs to comply with a change in law or procedure but rather depend upon the local government affected for such information. The Board does not have detailed information about a county's current costs to be able to independently quantify a change to a county's procedures.

Exemption Claims– New Property Acquisitions *Revenue and Taxation Code §271*

Current Law

Revenue and Taxation Code Section 271 allows for the cancellation or refund of taxes on properties on the regular roll that are acquired by various exempt organizations after the lien date (January 1) but prior to the beginning of the fiscal year (July 1). It allows for a similar cancellation or refund of taxes for organizations that do not come into existence until after the lien date and thereafter acquired properties before the beginning of the fiscal year.

For organizations that acquire properties after the fiscal year begins (on or after July 1), the taxes for that fiscal year are either canceled or refunded in pro-ratio to the number of days in the fiscal year that the property was owned by the organization. To receive the cancellation, refund, or proration, an application for the exemption must be filed "on or before the lien date in the calendar year next succeeding the calendar year in which the property was acquired." Basically, this means that for any property acquired between January 2, 2002, and December 31, 2002, an exemption claim for the property must be filed on or before January 1, 2003. However, if an organization does not file a claim within this time period but files an exemption claim afterwards, the maximum tax on the property will not exceed \$250.

Proposed Law

This bill would amend Revenue and Taxation Code Section 271 to instead provide that the exemption claim must be filed "within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier."

Comments

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Purpose. If an organization acquires property near the end of the calendar year (for example, a donation of property to the organization recorded on December 31, 2002) there may be insufficient time to complete and file a claim by the next lien date (i.e., January 1, 2003). This amendment would instead give organizations a uniform 90 days after acquiring properties (or until the following February 15 for November and December acquisitions) to file a claim for the refund, cancellation, or pro-ratio of taxes on the regular roll. This gives more time to file a claim form for property acquired in the last three months of the year, but less time to file a claim for property acquired in the first nine months of the year. The transition from “end of year” to “90 days” could result in some late filings from nonprofits not aware of the change in the first few years. However, if this occurred, at most \$250 in tax would be owed.

Suggested Amendment. For uniformity, the sponsors may also want to amend Revenue and Taxation Code Section 75.21, which relates to filing claims on the supplemental roll, and similarly specifies that a claim be filed by the next lien date.

Information Requests - New Construction *Revenue and Taxation Code Section 441*

Current Law

Section 441(d) of the Revenue and Taxation Code requires that taxpayers make available for examination information or records regarding their property to the assessor that are required by the assessor for assessment purposes. The law specifies that details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are information essential to the proper discharge of the assessor’s duties.

Proposed Law

This bill would add subparagraph (2) to subdivision (d) of Section 441 of the Revenue and Taxation Code to provide that these provisions apply to an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party.

In addition, it would require that the owner-builder or owner-developer of new construction provide the assessor with information and records regarding that property within 45 days of receipt of a written request by the assessor. It specifies that information and records requested include the total consideration provided by the purchaser or on behalf of the purchaser that was paid or provided either, as part of or outside of the purchase agreement, including, but not limited to, consideration paid or provided for the purchase or acquisition of upgrades, additions, or any other additional

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or supplemental work performed or arranged for by the owner-builder or owner-developer on behalf of the purchaser.

Comments

1. **Sponsor.** This provision is sponsored by San Diego County. Its purpose is to counteract a trend by some homebuyers of new homes to not report the total purchase price paid for the home to establish a lower assessed value for property tax purposes. Some of these homebuyers are unaware that they are required to report the total consideration paid for the property.
2. **Failure to Report Total Purchase Price.** It has been reported that some sales agents of homes in new home subdivisions have suggested to prospective buyers that they could pay for additional upgrades and options on the home with cash and then not report the cost of these upgrades and options to the county assessor. For example, a home buyer who purchases a home with a base price of \$350,000 could select \$25,000 in upgraded kitchen and flooring options and pay for these items with cash. In the change of ownership statement to the assessor, a purchase price of \$350,000 rather than \$375,000 is reported. Thereby "saving" \$250 per year in taxes if these options and upgrades are not discovered. Homebuyers who finance the options and upgrades are unable to conceal the true price paid for the home since the down payment and the financing is reported on the change of ownership statement. In addition to potentially reducing the amount of property taxes paid, this practice reduces the documentary transfer taxes charged when the deed is recorded with the county recorder.
3. **Assessors have had difficulties obtaining information from some subdivision homebuilders and developers who will not provide information about a property after the sale has been completed.** In completing the building records detailing the property characteristics of property in subdivisions, where the floor plans and features are variable but within a known range, the county assessor will often obtain information from the developers to minimize the intrusion to the new home buyer and reduce the administrative costs by collecting the information from a central source. However, some home builders and developers claim that Section 441 does not apply to them since they are no longer the owner of the property, and they therefore are not required by law to provide the assessor with any information about the property. Instead, they state that the assessor should contact the new buyer to obtain details on the property. This bill would state that such information is required to be disclosed by the builder or developer after the sale.

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Leased Property
Revenue and Taxation Code Section 442

Current Law

Existing property tax law requires the owners of specified property interests, including property that is the subject of a lease, to file a property statement with the county assessor listing all property interests held by that owner. Existing law specifies that property leased under a conditional sales agreement to tax-exempt schools, colleges, libraries, and museums need not be included in the lessor's property statement.

Existing law does not specifically require that property leased under a conditional sales agreement, an agreement that allows the lessee the option to purchase the property for a nominal price at the end of the term of the lease, to be included in the lessor's property statement.

Proposed Law

This bill would amend Section 442 of the Revenue and Taxation Code to require the lessor of property that is leased under a conditional sales agreement to list that leased property on the lessor's property statement.

Comments

Purpose. According to the sponsor it is often unclear to both lessors and lessees who should report property subject to a conditional sales agreement for taxation purposes. It is possible that both parties report the property, potentially leading to double taxation if undiscovered, or that neither party reports the property, leading to an escape assessment that may later be discovered in an audit of either party. This bill would clarify which party is responsible for reporting the property for property tax assessment purposes.

COST ESTIMATE

The Board would incur additional costs to estimate the fiscal impact on local government for any action performed by the Board. The estimated cost to the General Fund to undertake the additional duties are approximately \$94,000 for 2003-04 and \$147,000 for 2004-05 and each year thereafter.

REVENUE ESTIMATE

The provisions of Section 441 of this bill could result in increased revenues by allowing the assessor to determine the total consideration paid for a property which is currently escaping taxation due to misreporting.

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